

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

Writ Appeal No.464 of 2017

Judgment: (Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

This appeal, under Clause 15 of the Letters Patent, is preferred against the interlocutory order passed by the learned single judge in W.P. No. 9580 of 2017 dated 3.4.2017. The appellants herein are the petitioners in W.P. No. 9580 of 2017. They questioned the action of the respondents in computing the effect of 2% adjustment against the issue of Form 'C' in relation to tender supply of Fabricated Structural Steel Assembly, and with regards outside state suppliers, as lower tenderers even though the quoted rate of the local supplier, was lower, as arbitrary and unconstitutional. In the alternative, they sought a declaration that Clause 8.2 of the Special Purchase Conditions (SPC) in the bid document dated 22.11.2016, floated by the third respondent, was illegal and arbitrary.

By an interlocutory order dated 17.3.2017, the learned Single Judge, while ordering notice before admission and having permitted the appellants-writ petitioners to take out personal notice on respondent Nos. 2 to 5 and 7 by Registered Post with Acknowledgment due and to file proof of the same, observed that, since this was a tender matter and the Court wanted to dispose of the same at the earliest point of time, status-quo as on that date should be maintained. The matter was directed to be listed after two weeks.

When the matter was listed thereafter on 3.4.2017, counter-affidavits were filed on behalf of respondent Nos.2 to 5. While there appears to be a dispute regarding grant of time to file a rejoinder, and it is contended that the learned Single Judge had vacated the order without the counsel for the appellants-writ petitioners being given an opportunity to put forth their submissions, it is wholly unnecessary for us to examine this contention, since we are satisfied that the order under appeal must be set aside as it is bereft of reasons.

In the order dated 3.4.2017, the learned Single Judge recorded the submission of Sri K. Venkata Rao, learned counsel appearing on behalf of respondent Nos. 2 to 5, that a letter of acceptance was already issued on

8.3.2017 in favour of the 7th respondent; the contract had to be executed within a period of six months; all proceedings took place within the jurisdiction of New Delhi Ports as the tender was issued by the third respondent from New Delhi; and tenders were submitted in New Delhi alone. Thereafter, the learned Single Judge observed that, in the circumstances, there was no justification in stalling the work; and the work could be executed pending further orders in the writ petition. Recording the request of the counsel for the appellants-writ petitioners to file a rejoinder, the matter was posted after one week. The effect of the order dated 3.4.2017 is that the earlier order of status-quo passed on 17.3.2017 is no longer operative, and it is now open to the 7th respondent to execute the work pending disposal of the writ petition.

Sri S. Niranjan Reddy, learned Senior Counsel appearing on behalf of the appellants-writ petitioners, would contend that, since the order is bereft of reasons, it is liable to be set aside; a copy of the counter-affidavit was received by the appellants-writ petitioners just a day before the order was passed on 3.4.2017; it is in such circumstances that they had sought time to file a rejoinder; if the learned Single Judge was not inclined to grant them time to file a rejoinder, they should at least have been given an opportunity to put forth their submissions; even without assigning reasons, for vacating the earlier order of status-quo, the learned Single Judge has permitted the work to be executed; the assertion, in the counter affidavit, that the 7th respondent had started execution of the contract work, is a mis-representation of facts; the work, sought to be executed, is located at Ramagundam, within the State of Telangana; the material required to be supplied is towards fabrication; these fabricated structures are required to be installed at Ramagundam; procurement of material is for the unit located at Ramagundam; a part of the cause of action has arisen within the territorial limits of this Court; consequently, the appellants-writ petitioners are entitled to invoke this Court's jurisdiction under Article 226 of the Constitution of India; and the order under appeal necessitates being set aside.

On the other hand Sri K. Venkata Rao, learned Counsel for respondent Nos. 2 to 5, would contend that the appellants-writ petitioners had suppressed the fact that the 7th respondent was awarded the contract on 8.3.2017 itself;

even without challenging the letter of acceptance dated 8.3.2017, the writ petition was filed, and the order of status-quo was obtained suppressing relevant and material facts; the documents now placed before this court would show that the 7th respondent had taken steps to procure the material, and they had placed orders on third parties; in any event, this Court lacks territorial jurisdiction as the tender notice was issued by the Head Office at New Delhi, and the bids were invited at New Delhi; the contract is merely for supply of material by the 7th respondent, which is located at Bhilai outside the territorial jurisdiction of this Court; and, therefore, the order under appeal does not necessitate interference.

While a writ petition would not be entertained by this Court, under Article 226 of the Constitution of India, if the cause of action in its entirety arises outside its territorial limits, if a part of the cause of action arises within the territorial limits of this Court, though a substantial part of the cause of action arises outside its territory, it is the appellants-writ petitioners' right to choose the forum they wish to invoke; and they cannot be non-suited on the ground that a substantial part of the cause of action has arisen outside the territorial limits of this Court. We may not be understood to have held that the cause of action, in the present case, has arisen partly within the territorial limits of this Court. All that we are holding is that, if a part of the cause of action has arisen within the territorial limits of this Court, a writ petition can be entertained.

The learned Single Judge was therefore required to consider, among others, whether the cause of action, even in part, arose within the territorial limits of this Court justifying the appellants-writ petitioners having invoked its jurisdiction. The order under appeal does not record any finding by the learned Single Judge that this Court lacks territorial jurisdiction. The learned Single Judge has merely noted the submission urged on behalf of respondent Nos. 2 to 5 that this Court lacks territorial jurisdiction, and nothing more.

While it does appear that the appellants-writ petitioners have not questioned the letter of acceptance dated 8.3.2017 in the writ petition filed by them, and the learned Single Judge does not seem to have been made aware, that a letter of acceptance was issued on 8.3.2017, when the status-quo order

was passed on 17.3.2017, these are all matters which the learned Single Judge would be required to consider in deciding whether or not the earlier order of status-quo should be continued, varied or vacated.

The order under challenge before us is the order dated 3.4.2017 which, as held hereinabove does not record reasons for varying the earlier order of status-quo. On the short ground that it is bereft of reasons, the order under appeal dated 3.4.2017 is set aside. It is made clear that we have not expressed any opinion either on merits, or regarding the effect of the order of status-quo, passed by the learned Single Judge on 17.3.2017, on the action taken by the respondents pursuant to the letter of acceptance dated 8.3.2017.

As the learned Single Judge has himself opined, in his order dated 17.3.2017, that the matter requires urgent hearing, we have no doubt that, on a request being made by the learned counsel for either parties, the learned Single Judge would consider hearing the writ petition early.

The writ appeal is disposed of accordingly. Miscellaneous Petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(Dr. SHAMEEM AKTHER, J)

13th April, 2017

Note;
Furnish c.c. by 15.4.2017.
b/o
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